

General Information Letter: Restrictions on net operating loss carryovers contained in Section 280H of the Internal Revenue Code do not apply to Illinois net loss carryovers.

January 14, 2000

Dear:

This is in response to your facsimile dated December 27, 1999 in which you state the following:

Can you tell me if Illinois law follows IRC Section 280H(e)?

According to the Department of Revenue ("Department") regulations, the Department may issue only two types of letter rulings: Private Letter Rulings ("PLR") and General Information Letters ("GIL"). For your convenience, we enclose a copy of 2 Ill. Adm. Code §1200 explaining these two types of rulings issued by the Department.

Due to the nature of your inquiry and the information presented in your letter, we are required to respond with a GIL. GILs are designed to provide background information on specific topics. GILs, however, are not binding on the Department.

The Illinois treatment of net operating losses ("NOL") is discussed in Section 207 of the Illinois Income Tax Act ("IITA"), 35 ILCS 5/101 et seq. Please note that Section 207 was recently amended by Public Act 91-541. The answer to your question, however, remains the same regardless of whether you look at the old or the new IITA Section 207.

Prior to the enactment of Public Act 91-541, Illinois allowed net operating losses ("NOL") to be carried back in the same manner as set forth under the IRC Section 172. Although IRC Section 280H(e) disallows NOL to be carried back by a personal service corporation to or from an elected fiscal year, no similar disallowance is contained in the IRC Section 172. As a result, a personal service corporation can carry back an Illinois NOL to or from an elected fiscal year pursuant to IRC Section 172 for any taxable year ending prior to December 31, 1999.

Under the new law, for any taxable year ending on or after December 31, 1999, Illinois allows NOL to be carried back to each of the two taxable years preceding the taxable year at issue. Again, the result is that a personal service corporation can carry back an Illinois NOL to or from an elected fiscal year to the two preceding taxable years. For your convenience, enclosed please find copies of IITA Section 207 both before and after Public Act 91-541.

As stated above, this is a general information letter which does not constitute a statement of policy that either applies, interprets or prescribes tax law. It is not binding on the Department. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

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Sincerely,

Heidi Scott
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